

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2018-CP-00441-COA**

**SCOTT M. TANNER A/K/A SCOTT  
McKINNLEY TANNER A/K/A SCOTT TANNER**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

DATE OF JUDGMENT:	12/22/2017
TRIAL JUDGE:	HON. KATHY KING JACKSON
COURT FROM WHICH APPEALED:	JACKSON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	SCOTT M. TANNER (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BARBARA WAKELAND BYRD
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
DISPOSITION:	AFFIRMED - 05/05/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

**BEFORE BARNES, C.J., TINDELL AND C. WILSON, JJ.**

**C. WILSON, J., FOR THE COURT:**

¶1. Scott Tanner filed a motion in the Circuit Court of Jackson County, Mississippi, to reclassify his sexual battery conviction as a non-violent offense. The circuit court denied Tanner’s motion on the merits, and Tanner appealed. We affirm the circuit court’s order, although we do so because the circuit court lacked jurisdiction over Tanner’s motion.

**BACKGROUND AND PROCEDURAL HISTORY**

¶2. In 2008, a Jackson County Circuit Court jury convicted Tanner of sexual battery pursuant to Mississippi Code Annotated section 97-3-95(1)(d) (Rev. 2000). “The [circuit] court sentenced Tanner to twenty years in the custody of the Mississippi Department of

Corrections, with fourteen years to serve and six years of post-release supervision.” *Tanner v. State*, 20 So. 3d 764, 765 (¶1) (Miss. Ct. App. 2009). In 2009, we affirmed Tanner’s conviction and sentence on direct appeal. *Id.* Since we affirmed Tanner’s conviction and sentence, he has filed six applications with the supreme court for leave to file motions in circuit court for post-conviction relief (PCR) based upon various grounds. The supreme court denied each of Tanner’s PCR applications.

¶3. Undeterred, on August 7, 2017, Tanner filed a “Motion for Judicial Classification of Offense as Non-Violent” in the Jackson County Circuit Court, without seeking leave from the supreme court. In his motion, Tanner asserted that the circuit court could, and should, reclassify his 2008 sexual battery conviction as a non-violent offense pursuant to Mississippi Code Annotated section 97-3-2(1)(q) (Rev. 2014) because the elements of section 97-3-95(1)(d) (sexual battery) and section 97-3-65(1)(b) (Rev. 2000) (statutory rape) are the same. The circuit court disagreed and denied Tanner’s motion on the merits. Tanner filed a notice of appeal.

## DISCUSSION

¶4. Before reaching the merits of Tanner’s appeal, we must address the issue of jurisdiction. Even when not raised by the parties, “an appellate court must address issues of jurisdiction on its own motion.” *Hamilton v. Southwire Co.*, 191 So. 3d 1275, 1279 (¶15) (Miss. Ct. App. 2016).

¶5. The record is unclear whether the circuit court viewed Tanner’s motion as a PCR motion. In his appeal brief, Tanner disclaims that his motion was a PCR motion and instead

casts his motion as a “post-trial motion . . . pursuant to a relatively new statute.” We disagree. “A pleading cognizable under the [Uniform Post-Conviction Collateral Relief Act (UPCCRA)] will be treated as a PCR motion that is subject to the procedural rules promulgated therein, regardless of how the plaintiff has denominated or characterized the pleading.” *Copple v. State*, 196 So. 3d 189, 191-92 (¶8) (quoting *Knox v. State*, 75 So. 3d 1030, 1035 (¶12) (Miss. 2011)); *see also Johnston v. State*, 214 So. 3d 317, 318 (¶¶6-9) (Miss. Ct. App. 2017) (treating petition for reclassification hearing as PCR motion and determining that relief requested pursuant to section 97-3-2 does not apply retroactively).

¶6. The UPCCRA “provide[s] the courts of this state with *an exclusive and uniform procedure* for the collateral review of convictions and sentences. . . .” Miss. Code Ann. § 99-39-3(1) (Rev. 2015) (emphasis added). Under the UPCCRA, “a prisoner must seek leave from the supreme court to proceed in the trial court where his ‘conviction and sentence have been appealed to the supreme court and there affirmed or the appeal dismissed.’” *Washington v. State*, 237 So. 3d 775, 778 (¶13) (Miss. Ct. App. 2017) (quoting Miss. Code Ann. § 99-39-7 (Rev. 2015)), *cert. denied*, 236 So. 3d 820 (Miss. 2018).

¶7. We find that Tanner’s “post-trial motion” is a pleading cognizable under the UPCCRA, as it collaterally attacks his conviction and sentence for sexual battery. Because this Court affirmed Tanner’s sexual battery conviction and sentence in 2009, Tanner needed permission from the supreme court to proceed with his subject motion in the circuit court. Tanner is clearly aware of this requirement given his six prior applications filed with the supreme court for leave to proceed with PCR claims. Nonetheless, the record does not show

that Tanner sought or received permission from the supreme court to file the subject motion in circuit court. Accordingly, the circuit court lacked jurisdiction over Tanner's motion.

¶8. Finding that Tanner's motion was governed by the UPCCRA and finding that the circuit court lacked jurisdiction to entertain the motion because Tanner failed first to obtain leave to proceed from the supreme court, we affirm the circuit court's order. "While the circuit court incorrectly denied rather than dismissed [Tanner's] PCR motion, we find the distinction immaterial." *Id.*

¶9. **AFFIRMED.**

**BARNES, C.J., CARLTON AND J. WILSON, P.JJ., GREENLEE, WESTBROOKS, TINDELL, McDONALD AND McCARTY, JJ., CONCUR. LAWRENCE, J., NOT PARTICIPATING.**